

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT INDIANA**

MALIBU MEDIA, LLC,)	
)	
Plaintiff,)	Civil Case No. <u>1:12-cv-01116-RLY-MJD</u>
)	
v.)	
)	
MEGAN RUMPKE, ZHIWEI XIAO,)	
JOHN MUTZ, TIM DODD, JENNIFER)	
FOREMAN, NICK WHETSEL,)	
HAISHAN WANG and JOHN DOE 1,)	
)	
Defendants.)	
)	

**PLAINTIFF'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING
DEPOSITION BY TELEPHONE OF THIRD PARTY ANDRE HAFFENDEN**

Plaintiff, Malibu Media, LLC (“Plaintiff”), by and through undersigned counsel and pursuant to Fed. R. Civ. P. 30(b)(4) hereby moves for the entry of an order authorizing Plaintiff to depose third party Andre Haffenden by telephone, and states:

1. Defendant’s discovery responses state that Andre Haffenden was one of Defendant’s roommates at the time of the alleged infringement. Defendant also stated that one of his roommates could have used his computer to commit the infringement. Accordingly, Plaintiff seeks to depose Mr. Haffenden.

2. Although Defendant did not provide Mr. Haffenden’s current address, Plaintiff’s research indicates that Mr. Haffenden currently lives in New York. Accordingly, Plaintiff intends to depose Mr. Haffenden by telephone.

3. Fed. R. Civ. P. 30(b)(4) states that “[t]he parties may stipulate – or the court may on motion order – that a deposition be taken by telephone or other remote means.” *Id.*

4. Defendant has made clear that he will not agree to anything prior to finding and

consulting with an attorney. Thus, no stipulation can be obtained.

5. The discovery deadline, December 6, 2013, is rapidly approaching and Plaintiff cannot wait to hear from Defendant at some unknown time in the future (if at all), regarding a stipulation.

6. This Motion is made in good faith and not for the purpose of undue delay.

7. No party would be prejudiced by granting the subject Motion.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order authorizing Plaintiff to depose third party Andre Haffenden by telephone. A proposed order is attached for the Court's convenience.

Dated: November 22, 2013

Respectfully submitted,

NICOLETTI & ASSOCIATES, PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Nick Whetsel
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Pro se

By: /s/ Paul J. Nicoletti